MYSORE VILLAGE OFFICES ABOLITION (AMENDMENT) BILL, 1967

Motion to consider

SRI B. RACHAIAH (Minister for Revenue and Forests).—Sir, I move:

"That the Mysore Village Offices Abolition (Amendment) Bill, 1967 be taken into consideration".

SRI M. NAGAPPA (Raichur).—Sir, my point of order is there. I raise a point of order under rule 311 (1) read with rule 69 of the Rules of Procedure.

Rule 69 reads:

"A Bill involving proposals for the delegation of legislative power shall further be accompanied by a memorandum explaining such proposals and drawing attention to their scope and stating also whether they are of normal or exceptional character."

If we read the original Act section 9, sub-section (2), sub-section (2) says that a holder of a village office entitled to payment under sub-section (1) shall make an application to the Deputy Commissioner in the prescribed form within one year from the appointed date. The Deputy Commissioner shall, after holding an enquiry in the prescribed manner by order determine the amount payable to the applicant.

So, in the original Act, this august House has fixed the date for filing application as one year from the appointed day. The purpose of bringing this Bill is only to delegate that power even to the Deputy Commissioner. Such a delegation amounts to delegation of legislative powers. In support of my view, I refer to 1964 Supreme Court judgment. It is said that the Constitution does not allow for rigid deviation of functions between the three agencies of the State—Executive, Legislative or judiciary.

Apart from that, I also quote Halsbury's Laws of England, Volume 7, page 192.

As per this new clause (ii) of sub-clause (2):

"A holder of a village office entitled to payment under sub-section (1) may, within such time as may be prescribed."

Whereas this period was prescribed under the repealing section of the original Act. Therefore, the power of fixing the time for submitting application is being delegated to the Executive. Therefore, the memorandum explaining such proposals and drawing attention to their scope whether they are normal or of exceptional character, should be appended to this Bill. Unless that is done, this Bill cannot be taken for consideration.

SRI B. RACHAIAH.—Sir, the appointed day is nothing but the day on which the Act came into being. Since the Act was questioned in the

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High Court and then an appeal went up to the Supreme Court, the village officers could not apply in time for the payment of the relief as provided for.

MR. SPEAKER.—The hon'ble member is not questioning the propriety or otherwise. He is dealing with the procedural matter. Under the amending Bill, where certain provisions are there, if there is likelihood of delegation, the rule requires that a memorandum explaining it should be there. This Bill does not contain that and therefore, this Bill is not in order. That is the contention of the hon. member. If that is so, it may be supplied; if that is not so, it need not be supplied.

2-30 P.M.

SRI B. RACHAIAH.—We are not delegating any powers to the Deputy Commissioner or lower authorities. The appointed day has been fixed. Instead of Village Officers applying to the Deputy Commissioner for payment of compensation, the Deputy Comissioner will himself decide the quantum of relief that is to be paid to each individual holder. Therefore the Government is not delegating any power to the local officers.

SRI S. R. KANTHI (Minister for Law and Parliamentary Affaires).—It is not delegation of any legal powers. Under this Act no legal powers are being delegated. Only administrative powers are delegated. So, the hon'ble member is mixing up the idea of delegation of legal power and administrative power.

SRI M. NAGAPPA.—My submission is, that this august House has the right to fix the date for submitting application and accordingly it is done in the repealing section. I draw the attention of the Minister for Law to sub-section (2) of the section 9 wherein it is definitely stated that "within the prescribed time-within one year from the appointed date". The legislature has fixed the date as within one month from the appointed date. That date is going to be fixed by the Government as per sub-clause (2). So, the Government has to prescribe a date. Afterwards only the applicants have to submit their applications as prescribed. Prescribed means, as prescribed under the rule. The power of delegation to the executive Government to frame certain rules or to fix a date for presentation of petition is going to be delegated. Therefore, I have submitted that to frame rules or regulations, notifications which are essentially are legislative in character. If such power is going to be delegated to the Government, necessarily there must be a memorandum appended to this Bill. Unless it is appended, the Bill cannot be taken for consideration.

MR. SPEAKER.—Sub-rule (2) of the old Act that the hon'ble member is referring to is at page 7. That rule, I believe, is going to be replaced. Therefore the provisions of that rule do not rule the field, unless the amending Bill is accepted.

Sri M. NAGAPPA.—Therefore, the legislature has to fix a certain date for submitting applications.

Mr. SPEAKER.—Delegation that the member is referring to, does not now exist.

Sri M. NAGAPPA.—There was no time for the executive Government to fix time. At that time the legislature has fixed in the statute itself. Therefore old sub-section (2) does not come up for consideration. With regard to delegated legislation, sub-rule 2 vanishes and you have to see whether there is any delegation under the present amending Bill. It comes in the present amending Bill. Clause (ii) of sub-clause (2) points to that :

> "A holder of a village office entitled to payment under sub-section (i) may within such time as may be prescribed or such further time as the Deputy Commissioner may in his discretion allow....."

The power of fixation of time in sub-section 2, is going to be delegated to the Government now as per this clause. Therefore, it means delegation of power to the Government. Essentially there must be a memorandum regarding this matter.

Mr. SPEAKER.—The Minister for Parliamentary Affairs will please clarify this. " The holder of a village office entitled to appointment under sub-section (i) may within such time as may be prescribed ".

What is the significance of those words ?

Sri S. R. KANTHI.—As prescribed by the Government, it is Government's power.

Mr. SPEAKER.—It is the legislative power that the Government is claiming. The power is given under the rule. The legislature is going to vest the Government with power.

The hon'ble Minister will please consider it if he likes. After all giving a memorandum is not a big matter. He may have it examined. If the Government is prescribing, then it is delegated by the legislature.

Sri B. RACHAIAH.—Sub-section 2 of section 9 is going to be replaced by new sub-section. After this is accepted, we are seeking the legislature to give powers to the Government to prescribe the time.

Mr. SPEAKER.—If it is to be under the rules, it is delegated legislation.

Sri S. R. KANTHI.—What you say seems to be correct. If power is to be given to the Government or the Deputy Commissioner, that becomes a sort of delegation. We can add to the statement that it is also proposed that power is being delegated to the Commissioner.

Mr. SPEAKER.—Statement regarding delegated legislation is not mentioned in the objects and reasons.

Sri S. R. KANTHI.—Therefore we can add a sentence.

Mr. SPEAKER.—Adding a sentence or not adding, makes all the difference.

Sri H. SIDDAVEERAPPA.—Sir, the right royal course for my friends is simply to withdraw the Bill and put it in the proper form. I pity them ; they have not followed the correct procedure.

I have also given notice of a resolution ; that will come afterwards. This Bill is to replace the ordinance that has been passed. What objection holds good for the Bill, will hold good for the ordinance that has been passed.

Sri S. D. KOTHAVALE (Sankeswar).—Sir, the scope of delegated legislation is to prescribe a machinery by which the substantive provisions of a particular legislation have to be carried into effect. Therefore, to appoint a particular date is not a machinery ; it only means that from that date the provision is to come into force. Probably the wood 'prescribed' is wrongly used. The proper word should be ' appointed '. I propose to move an amendment to that effect.

Sri S. SIVAPPA.—Sir, this faulty Bill may be withdrawn and they may bring forward a properly-worded Bill. The Minister for Parliamentry Affairs has conceded that it is not well worded.

Sri DIGAMBAR RAO B. KALMANKAR (Alnad).—Sir, here it only refers to the powers given to the Deputy Commissioner and not to Government. Government does not come into the picture as per the wording of sub-clause (2) (ii) of clause 2 of this amending Bill. So, this amounts to delegation of power. Consequently, it is only to the Deputy Commissioner and not to the Government. There is nothing to show that it is to be prescribed by the Government; it has to be prescribed by the Deputy Commissioner. Therefore, it requires a memorandum.

Mr. SPEAKER.—I am not concerned with what is going to come by way of amendment ; I am concerned with the Bill which is before us and to infer that the word that is used there, namely, 'prescribed' was intended to be 'appointed' is something which I cannot accept. A preliminary point has been raised that a memorandum regarding delegated legislation is necessary and I have to rule whether a memorandum is necessary or not to the Bill that is before the House. Therefore, I am unable to accept Sri Kothavale's contention that the intention is to be inferred like that.

Members' Representation

Sri S. SIVAPPA.—Sir, the Ministers are consulting the Secretaries here and they are converting this Assembly into a Minister's chamber. They do not know how to talk to the Secretaries. They are getting inspiration from them. It is a most unfortunate affair. I therefore request you, Sir, to adjourn the House for some time so that our Ministers may be properly advised by their Secretaries and we can see a Bill brought before the House in the proper form.